

BEFORE THE DIRECTOR
OF THE
OFFICE OF CAMPAIGN FINANCE
D. C. BOARD OF ELECTIONS AND ETHICS
2000 14TH STREET, N. W., SUITE 420
WASHINGTON, D. C. 20009
(202) 939-8710

IN THE MATTER OF

Torrence Henighan
Advisory Neighborhood Commission
(ANC) Member for 2C-04

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DATE: August 5, 1999

DOCKET NO.: PI 1999-102(b)

ORDER

Statement of the Case

This matter comes before the Office of Campaign Finance (OCF) based upon Statutory Audit of Advisory Neighborhood Commission 2C for the Period October 1, 1995 Through December 31, 1997 (Report) issued on December 11, 1998 and reissued on December 18, 1998, by the Office of the District of Columbia Auditor. The Office of Campaign Finance (OCF) received the Report on January 6, 1999. The Auditor alleged therein, inter alia, that Torrence Henighan, 401 K Street, N. W., No. 810, Washington, D. C., 20001, Advisory Neighborhood Commission Member for 2C-04, accepted checks from the ANC 2C treasurer in December 1995 and 1996 in the amount of \$100 each, for personal purposes.

Issues

1. Whether Torrence Henighan (respondent) misused his ANC office to obtain financial gain when he accepted checks allegedly for personal purposes from the ANC 2C treasurer in December 1995 and 1996 in the amounts of \$100 each?
2. Whether respondent received \$100 in both December 1995 and 1996 together from the law firm of Wilkes, Artis, Hedrick and Lane (WAHL) and an employee of the firm, Norman M. Glasgow, Jr., based upon an understanding that respondent would support WAHL and Mr. Glasgow on certain issues, or where it could be reasonably inferred that the received monies would influence respondent in the discharge of his duties?

Background

The Auditor was concerned overall with the fact that checks were written to ANC 2C members without the presentation of adequate documentation or authorization from the ANC 2C body. The members failed to present to the Auditor, upon request, any receipts or invoices to document their use of public funds. See Report at pp. 8-11.

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The Auditor documented that, on December 13, 1995, the law firm of Wilkes, Artis, Hedrick and Lane donated \$400, and an employee of the firm, Norman M. Glasgow, Jr., donated \$200, to ANC 2C. "On the same date, the treasurer and chairperson of ANC 2C signed [an] ANC check disbursing \$100 to [respondent]. The purpose noted on [the] check simply stated 'ANC Christmas gift needy.'" Id., at p.15. Similarly, in December 1996, the law firm donated \$400, and Mr. Glasgow donated \$100, to ANC 2C. Again, a check for \$100 was written to respondent from ANC 2C's account. "The purpose written on [the] check simply stated 'gift needy.'" Id.

Upon examination of ANC 2C minutes of the audit period, the Auditor pointed out that on 3 occasions, July 17, 1996, October 2, 1996 and October 1, 1997, respondent joined in a vote with other ANC 2C commissioners to support interests of Wilkes, Artis, Hedrick and Lane and of Mr. Glasgow.

The Auditor opined that "[i]t appeared that [respondent] violated conflict of interest provisions when: (1) [respondent] accepted donations from a law firm and one of its employees who had requested the ANC's support on certain issues; (2) the ANC disbursed the donations to [respondent]; (3) [respondent] accepted the donated funds; (4) [respondent asserted that donated funds were disbursed] for public purposes but could not provide adequate documentation to support how the funds were actually used; and (5) [respondent] voted to support the issues raised by the law firm and its employee." Id., at p 16.

Based thereon, the Auditor referred this matter to OCF on January 6, 1999 to review the circumstances surrounding respondent's acceptance of donations from the law firm and its employee for possible violations of the D. C. conflict of interest law. Id., at p. 17. Upon review of the entire Report, OCF initiated a preliminary investigation into this matter.

On February 12, 1999, OCF sent a letter to respondent to advise that OCF had commenced a preliminary investigation, and to request any information relevant to the matter. On the same date, similar letters were dispatched to Robert L. Gorham, Executive Vice President and Managing Director of Wilkes, Artis, Hedrick and Lane; and to Norman M. Glasgow of same, notwithstanding the fact that, prior to OCF's initiation of this matter as a preliminary investigation, Mr. Glasgow submitted to OCF on February 1, 1999, a sworn affidavit with supporting documentation. On February 22, 1999, Mr. Glasgow responded that he had no further information to submit; and Mr. Gorham resubmitted that which Mr. Glasgow submitted on February 1, 1999.

On March 30, 1999, OCF issued interrogatories to respondent and Mr. Gorham. Mr. Gorham requested and received a 1-day extension prior to submitting the responses on April 8, 1999. Respondent submitted answers to the interrogatories in person at the OCF office on April 6, 1999. At that time, an informal hearing was conducted to determine whether respondent had any additional information, e.g., receipts, documentation, or names and addresses of individuals to whom he allegedly distributed Christmas gifts in 1995 and 1996.

The scope of the OCF investigation encompassed reviewing and verifying all submitted information; interviews, in person and telephonically, with respondent and residents of 2C; research; and in-house meetings.

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Relevant Statutory Provisions

D.C. Code §1-261(l) states, in part: "No Commission may solicit or receive funds unless specifically authorized to do so by the Council, except that receipt of individual contributions of \$400 or less need not be approved by the Council. No person shall make any contribution, nor shall a Commission receive any contribution from any person which, when aggregated with all other contributions received from that person, exceeds \$400 per calendar year."

D. C. Code §1-1461(b) states, in part: "No public official shall use his or her official position or office to obtain financial gain for himself or herself, any member of his or her household, or any business with which he or she or a member of his or her household is associated, other than that compensation provided by law for said public official."

At 3 D.C.M.R. §9900.1 (June 1998), "to obtain financial gain" is defined as "to realize any monetary profit, or any benefit on which a monetary value can be fixed, by the public official, any member of his or her household, or any business with which the official or a member of the official's household is associated other than that compensation provided by law for that public official."

D.C. Code §1-1461 (c) states: "No person shall offer or give to a public official or a member of a public official's household, and no public official shall solicit or receive anything of value, including a gift, favor, service, loan gratuity, discount, hospitality, political contribution, or promise of future employment, based on any understanding that such public official's official actions or judgment or vote would be influenced thereby, or where it could reasonably be inferred that the thing of value would influence the public official in the discharge of his or her duties, or as a reward, except for political contributions publicly reported pursuant to §1-1416 and transactions made in the ordinary course of business of the person offering or giving the thing of value."

At 3 D.C.M.R. §3711.2(u), it reads that a fine of \$500 shall be imposed where a public official is found to have used his or her official position for personal financial gain.

At 3 D.C.M.R. §3711.2(v), it reads that a fine of \$500 shall be imposed where a public official is found to have accepted any thing of value to influence his or her official government actions.

At 3 D.C.M.R. §3711.6, it reads, in part, "[t]he Director may modify, rescind, dismiss or suspend any find imposed, under §3711, for good cause shown[.]"

D.C. Code §1-1471(f) states; "All actions of the Board or the United States Attorney for the District of Columbia to enforce the provisions of this chapter must be initiated within 3 years of the actual occurrence of the alleged violation of this chapter."

Summary of Evidence

In support of the referral, the Auditor submitted her Report [Exhibit (Exh.) A].

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To show cause why this matter should be dismissed, respondent submitted his April 6, 1999 Answers to Interrogatories (Exh. B). During the informal hearing held thereon, respondent, an elderly man and former ANC member, was extremely upset and appeared unfamiliar and confused about the purpose and underlying aspects of the instant investigation. He remembered that the donations were from

WAHL and Mr. Glasgow, the donations were for Christmas gifts for ANC 2C residents, and he alleged that he used them for the stated purposes. Nonetheless, respondent failed to recall how he spent the monies.

Exhibits for OCF include the following: Affidavit and supporting documentation of Norman M. Glasgow, Jr. received on February 1, 1999 (Exh. C); affidavit of Robert L. Gorham received on April 8, 1999 (Exh. D); and available meeting minutes for ANC 2C for the periods covering April 1996 through December 1997 (excluding the months of August and November 1997). (Exh. E).

Findings of Fact

Based upon the consideration by OCF of the record and the allegations contained herein, and in reliance upon the evidence indicated, I find:

1. In December 1995 and 1996, respondent was an Advisory Neighborhood Commissioner for ANC 2C/01. Exh. A.
2. From 1995 through 1997, the law firm of Wilkes, Artis, Hedrick and Lane (WAHL) appeared before ANC 2C to solicit support on various projects, to inform respondent and fellow commissioners about developments in other ANCs, and to, generally, show support for the residents of the ANC. Exhs. B-D.
3. Norman Glasgow, Jr. served as the representative from WAHL. Id.
4. From 1995 through 1997, WAHL made contributions to civic and charitable organizations in the District of Columbia, and, in most instances, around the time of Christmas. Exh. C.
5. On December 13, 1995, WAHL donated \$400 to ANC 2C for Christmas donations; and, Mr. Glasgow personally donated \$200 for same. Id.
6. On December 2, 1996, WAHL donated \$400 to ANC 2C for Christmas donations; and, on December 4, 1996, Mr. Glasgow personally donated \$100 for same. Id.
7. Neither the firm nor Mr. Glasgow contemplated that the donations were for any reasons other than Christmas donations for ANC 2C residents. Exhs. C-D.
8. On December 13, 1995, a check for \$100 was issued to respondent, and 4 other ANC 2C members, by the ANC 2C treasurer for the purpose of "gift needy." Exh. A at p. 9.
9. On December 5, 1996, a check for \$100 was issued to respondent and 4 other ANC 2C members, for the purpose of "gift needy" or "gift for needy." Id.

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10. Respondent understood that the monies were "to help any needy I wish at Christmas." Exh. B.
11. Respondent was unable to recall how he used the December 1995 and 1996 funds he received from WAHL and Mr. Glasgow for Christmas donations for ANC 2C residents, and to whom he delivered gifts, if any.

12. OCF was unable to find any ANC 2C residents who received Christmas gifts from respondent in December 1996.
13. In the absence of any evidence to the contrary, respondent did not use the monies he received from WAHL and Mr. Glasgow for Christmas donations for ANC 2C residents in 1995 or 1996.

Conclusions of Law

Based upon the record and evidence, I therefore conclude:

1. WAHL specifically contributed \$400 to ANC 2C for Christmas donations for ANC 2C residents both in December 1995 and 1996, consistent with D. C. Code §1-261(l).
2. Mr. Glasgow contributed \$100 to ANC 2C for Christmas donations for ANC 2C residents in December 1995, and \$200 to ANC 2C for same in December 1996, consistent with D. C. Code §1-261(l).
3. Respondent misused his office to obtain financial gain, pursuant to D. C. Code §1-1461(b), when respondent accepted a check from the ANC 2C treasurer in December 1996 in the amount of \$100, as a result of specific contributions by WAHL and Mr. Glasgow for Christmas donations for ANC 2C residents, because respondent did not use these monies for the purpose intended, i.e., Christmas donations for ANC 2C residents.
4. In accordance with 3 D.C.M.R. §3711.2(u), respondent should be fined \$500 for using his official position for personal financial gain.
5. Respondent's lack of recall and apparent confusion as to the subject of the investigation herein constitute good cause pursuant to 3 D.C.M.R. §3711.6 to warrant a reduction of \$450 of the imposed fine.
6. Respondent did not receive \$100 for personal purposes in December 1996 from WAHL and Mr. Glasgow, based upon an understanding that respondent would support WAHL and Mr. Glasgow on certain issues because respondent was well aware that the monies he received from WAHL and Mr. Glasgow in December 1996 were for Christmas donations for ANC 2C residents.

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7. It could be reasonably inferred that the \$100 from WAHL and Mr. Glasgow could have influenced respondent in the discharge of his duties because, in the absence of evidence to the contrary, respondent did not use the monies for the purpose intended, i.e., Christmas donations for ANC 2C residents.
8. In accordance with 3 D.C.M.R. §3711.2(v), respondent should be fined \$500 for accepting a thing of value to influence government action.

9. Respondent's lack of recall, combined with his age, and apparent confusion as to the subject of the investigation herein constitute good cause pursuant to 3 D.C.M.R. §3711.6 to warrant a reduction of \$450 of the imposed fine.
10. Respondent may have violated D. C. Code §§1-1461(b) and (c) when he accepted a check from the ANC 2C treasurer on December 13, 1995 in the amount of \$100, as a result of specific contributions by WAHL and Norman Glasgow, Jr. for Christmas donations for ANC 2C residents, in the absence of evidence to the contrary.
11. Any actions to determine whether respondent may have violated D. C. Code §§1-1461(b) and (c) when he accepted a check from the ANC 2C treasurer on December 13, 1995 in the amount of \$100, as a result of specific contributions by WAHL and Norman Glasgow, Jr., for Christmas donations for ANC 2C residents, should have occurred no later than December 13, 1998, pursuant to D. C. Code §1-1471(f).

Recommendation

I hereby recommend the Director to impose a fine of \$100 against respondent for violation of D. C. Code §1-1461(b).

Date

Kathy S. Williams
General Counsel

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ORDER OF THE DIRECTOR

IT IS ORDERED that a fine of \$100 be imposed against respondent for violation of D. C. Code §1-1461(b).

This Order may be appealed to the Board of Elections and Ethics within 15 days from issuance.

Date

Cecily E. Collier-Montgomery
Director

SERVICE OF ORDER

This is to certify that I have been served with a true copy of the foregoing Order.

Torrence Henighan
401 K Street, N. W.
No. 810
Washington, D. C. 20001

If applicable, please make check or money order payable to the D. C. Treasurer, c/o Office of Campaign Finance, Suite 420, 2000 14th Street, N. W. Washington, D. C., 20009.

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cc: The Honorable Deborah Nichols
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The Honorable Lydia Goring
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